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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1241

HOUSEHOLD FINANCE CORPORATION, NATHANIEL W. BARBER and JAMES S. PRATT, *Petitioners*

v.

COMMONWEALTH OF MASSACHUSETTS, *Respondent*

REPLY BRIEF FOR PETITIONERS

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The Petitioners are of the view that the matters raised by the Commonwealth in its Consolidated Brief in opposition to the several petitions for writs of certiorari in the "small loans" cases have been adequately covered in the petition previously filed. This reply is filed solely for the purpose of advising the Court that the jury selection procedures which have been questioned by the Petitioners from the inception of these cases have become all the more urgent in light of recent developments in Massachusetts.

The Court will recall that these Petitioners attacked both the grand and petit jury selection process as having been in violation of the requirements of the statutes of the Commonwealth and of the Constitution of the United States. These Petitioners pointed out that the juries chosen as a result of such procedures were substantially different in composition from those which would have resulted had they been drawn from the proper source and had only those legally exempt or unsuited in character been excluded. Household Petition, pages 23-27.

Only recently, Senior United States District Judge Charles E. Wyzanski, Jr. has reached essentially the conclusion which the Petitioners urged. In a case captioned *United States* v. *Raymond Isaac Andrews,* Criminal No. 72-74-W, Judge Wyzanski has pointed out that federal juries are selected from Massachusetts voting lists and that such voting lists exclude "persons who receive public aid or assistance and who ha[ve] not attempted to the best of his ability to provide for himself and his dependents." Judge Wyzanski concluded that a jury selected from such a list violated 28 U.S.C. § 1862. While Judge Wyzanski was ruling on a federal case, it is plain that a state criminal proceeding, drawing its jurors from the same source, would be equally constitutionally defective.

Even more recently, the Court of Appeals for the First Circuit reversed Judge Wyzanski and remanded the case for a hearing to determine who, in fact, was excluded from jury service as a result of the application of Massachusetts law. In our case, we know and have already demonstrated who was excluded. Household Petition, pages 25-26.

A copy of Judge Wyzanski's brief opinion and the opinion of the Court of Appeals is annexed to this Reply.

Respectfully submitted,

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